

DR 98-209

GRANITE STATE ELECTRIC COMPANY

Retail Rate Adjustments

Order Granting Motion for Confidential Treatment

O R D E R N O. 23,228

June 14, 1999

On December 2, 1998 Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for a series of retail rate adjustments relating to GSEC's stranded cost charge, transition service charge, and transmission service charge, as contemplated under the restructuring agreement approved in Docket No. DR 98-012 and GSEC's tariff. Pursuant to RSA 378:3, the Commission allowed these changes to go into effect on January 1, 1999 and scheduled a technical session. See secretarial letter dated December 31, 1998.

At a technical session held January 7, 1999, Commission Staff propounded a data request, Technical Session Request Staff 1-7(a), upon GSEC relating to Article 8.2 of the Transition Service Supply Contract between GSEC and Constellation Power Source, Inc. (CPS) dated December 14, 1998 (Contract).

The Contract provides that CPS supply GSEC the power needed to meet GSEC's "Transition Service 1" load requirement, which is the transition service load requirement for GSEC customers of record as of the retail access date, July 1, 1998,

as well as new residential and small commercial customers who requested service from GSEC within 120 days of the retail access date.

On January 14, 1999 GSEC filed with the Commission a Motion for Confidential Treatment, pursuant to N.H. Admin. Rules Puc 203.04 and Puc 204.06, with respect to Technical Session Request Staff 1-7(a) and GSEC's response to the data request. GSEC had provided the relevant material to the Commission on December 23, 1998 in docket DR 98-012, together with a Motion for Confidential Treatment.

In its motion GSEC states: (1) that one or both of the parties to the Contract consider the information referenced in Article 25 of the Contract, including the material provided in Article 8.2 of the Contract, to be proprietary business and/or commercial information; (2) that the parties to the Contract agreed to maintain certain provisions of the Contract confidential, and to protect them from public disclosure without the prior written consent of the other party; (3) that the parties to the Contract had previously taken steps to avoid disclosure of this information; and (4) that disclosure of such information could adversely affect the business position of one or both of the parties in the future.

Article 8.2 of the Contract provides for certain terms and conditions under the Contract regarding security and actions in event of breach. Pricing terms under the Contract are not

confidential and have been disclosed. GSEC's motion also asks that the content of the data request itself be treated as confidential.

GSEC and CPS, in response to a Commission request for information setting forth evidence of specific harm that would result from disclosure of the relevant information, represented: (1) that CPS is a competitive energy supplier and New England Power Pool participant who competes with other suppliers in the provision of energy and energy services; (2) the Contract was entered into following a competitive solicitation and negotiation process; (3) that the payment, security and other terms referenced in Article 25 of the Contract may differ from corresponding terms CPS has with other entities which CPS has with other entities with which it contracts in New England and could impair CPS's ability to negotiate different terms with other parties; and (4) that disclosure of these terms in this docket could chill the willingness of CPS and other suppliers to participate in the wholesale energy supply market in New Hampshire.

We review GSEC's motion by the standards set forth in Puc 204.06. Insofar as the information referenced in Article 25 contains terms, apart from pricing terms, which are commercially sensitive terms and proprietary, and the parties have otherwise protected the disclosure of this information, GSEC has

demonstrated in this instance that the information, if made public, would create a competitive disadvantage that outweighs the benefit to the public of disclosure.

The Commission by secretarial letter dated December 31, 1998 and mailed to the service list in the GSEC restructuring docket allowed the contract to go into effect subject to the right of any party to seek a hearing or otherwise challenge the rates. No request for hearing or other challenge was filed. In the instant case, the parties and the Commission were able to evaluate the reasonableness of the proposed contract and rates without making a public disclosure of the terms for which confidential treatment had been sought.

We find that the information provided in the filing which is included in the answer to the data request, but not the data request question itself, contains confidential information that meets the requirements of N.H. Admin. Rule Puc 204.06 (b) and (c). Based on GSEC's representations, under the balancing test we have applied in prior cases, e.g., Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, DE 97-171 (SGAT) Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998), we find that the benefits to GSEC of non-disclosure in this case outweigh the benefits to the public of disclosure. The Confidential Information should be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rule 204.06.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's Motion for Confidential Treatment is GRANTED, with the exception of the content of the data request itself; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New
Hampshire this fourteenth day of June, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary